

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| REGINALD ALLEN, | : | |
| | : | |
| Petitioner, | : | Case No. 1:01cv810 |
| | : | |
| v. | : | Judge Dlott |
| | : | |
| ALAN LAZAROFF, WARDEN, | : | Magistrate Judge Black |
| | : | |
| Respondent. | : | Habeas Corpus |

**WARDEN LAZAROFF'S RESPONSE
TO MR. ALLEN'S TRAVERSE**

Mr. Allen presented a single claim for habeas relief in which he asserted that his appellate counsel was constitutionally ineffective for failing to raise certain issues on direct appeal. Because Mr. Allen's appellate ineffectiveness claim was presented to and rejected by the Ohio Court of Appeals, the proper question before this Court is whether the state court's decision was contrary to or an unreasonable application of clearly established federal law as decided by the United States Supreme Court. *See* 28 U.S.C. § 2254(d).

In his Reply to Warden Lazaroff's Return of Writ, Mr. Allen does not even mention his appellate-ineffectiveness claim, although he does make some mention of the asserted ineffectiveness of his trial counsel. Mr. Allen has also not made any argument explaining why the appellate court's decision might be unreasonable. He bears the burden of demonstrating why the court of appeals decision was contrary to or an unreasonable application of federal law, but he has not endeavored to do so. *See Machacek v. Hofbauer*, 213 F.3d 947, 953 (6th Cir. 2000).

For those reasons, as well as those asserted in his Return of Writ, Warden Lazaroff respectfully requests that Mr. Allen's petition for writ of habeas corpus be denied.

Respectfully submitted,

JIM PETRO
Attorney General

s/J. Joseph Bodine, Jr.
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TRIAL COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on June 7th, 2004, a copy of the foregoing *Response to Mr. Allen's Traverse* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/J. Joseph Bodine, Jr.
J. Joseph Bodine, Jr.
Assistant Attorney General